

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED-CLERK
U.S. DISTRICT COURT

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TX EASTERN-BEAUMONT

ED CLARK AND WIFE,
MELISSA CLARK, INDIVIDUALLY
AND AS REPRESENTATIVES
OF THE CLASS

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CIVIL ACTION NO. _____

BY Adele M. Sullivan

1102CV0093

VS.

JEFFERSON COUNTY DRAINAGE
DISTRICT NO. 6

JUDGE SCHELL

JURY

DEFENDANT'S NOTICE OF REMOVAL

Defendant, Jefferson County Drainage District No. 6 (hereinafter "DD6"), files this its Notice of Removal under 28 U.S.C. § 1446(a) based on federal question jurisdiction, and in support thereof would respectfully show as follows:

A.

Introduction

1. Plaintiffs Ed Clark and wife, Melissa Clark, Individually and as Representatives of the Class, sued DD6 in the 172nd District Court of Jefferson County, Texas alleging Texas Water Code violations; negligence; nuisance; and wrongful taking under the Texas and United States Constitutions.

2. DD6 was originally served with formal notice of this suit on July 3, 2001. Although this case was not removable when originally filed, it became removable on January 31, 2002, under 28 U.S.C. § 1446(b), when Plaintiffs filed their First Amended Original Petition alleging a new claim based on a federal question.

B.

Nature of Suit and Basis for Removal

3. Removal is proper pursuant to 28 U.S.C. §§ 1441 and 1331 because Plaintiffs' petition raises a federal question. In particular, Plaintiffs' claim that Defendant's actions constituted a wrongful taking under the Fifth Amendment of the United States Constitution, arises under the laws of the United States. Plaintiffs' remaining causes of action are removable pursuant to 28 U.S.C. § 1441(c).

C.

Jury Demand

4. Plaintiffs demanded a jury trial in the State Court.

D.

The Notice of Removal Is Procedurally Correct

5. Pursuant to Local Rule CV-81 of the Eastern District, this Notice of Removal is accompanied by the following documents:

Exhibit A: A list of all parties in this case, their party designation and current status;

Exhibit B: Civil cover sheet, certified copy of the state court docket sheet and a copy of all pleadings and process as required by 28 U.S.C. § 1446(a);

Exhibit C: A complete list of attorneys involved in the removal action;

Exhibit D: A record of which parties, if any, requested trial by jury; and

Exhibit E: The name and address of the court from which the case is being removed.

6. Defendant's Notice of Removal is procedurally correct, as all served Defendants (there is only one) join in the removal of this action.


7. Defendant has attached to this notice all pleadings, process, orders, and all other filings from the state court action as required by 28 U.S.C. § 1446(a). *See* Exhibit B.

8. Venue is proper under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action is pending.

9. Defendant will promptly file a copy of this Notice of Removal with the clerk of the state court in which the action was pending.

10. The filing of this Notice, along with the filing of the Notice in the state court and service of the Notice upon opposing counsel and all other counsel of record, serve immediately to confer exclusive jurisdiction of this cause upon this Court and divest the state court of all jurisdiction over those proceedings and the claims and/or causes of action asserted therein. *See* 28 U.S.C. § 1446(d).

Respectfully submitted,



Larry J. Simmons

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ATTORNEYS IN CHARGE FOR DEFENDANT

JEFFERSON COUNTY DRAINAGE DISTRICT NO. 6

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Notice of Removal was served on all counsel of record via certified mail, return receipt requested pursuant to the Federal Rules of Civil Procedure on this the 20 day of February, 2002.


Larry J. Simmons

E165279

NO. _____

ED CLARK AND WIFE,
MELISSA CLARK, INDIVIDUALLY
AND AS REPRESENTATIVES
OF THE CLASS

VS.

JEFFERSON COUNTY DRAINAGE
DISTRICT NO. 6

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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

This is a Class Action lawsuit brought under the provisions of Rule 42 of the Texas Rules of Civil Procedure. The Plaintiffs bring this action individually and on behalf of the Class, which constitutes all individuals, corporations, businesses and unincorporated associations owning homes, businesses and property in the area west of the Beaumont Municipal Airport drained by a Jefferson County Drainage District No. 6 ditch that was flooded in June of 2001, or was otherwise damaged by the 2001 flood.

I.

Pursuant to the Texas Rules of Civil Procedure, the discovery in this case will be conducted under Level 1 of the Discovery Control Plan.

II.

Ed Clark and wife, Melissa Clark, Plaintiffs, are residents of 12902 Old Sour Lake Road, Beaumont, Jefferson County, Texas 77713. Plaintiffs, Ed Clark and wife, Melissa Clark, Individually and as Representatives of the Class, had severe flooding damage to their property in June of 2001, and have sustained a significant reduction in property values. Their claims are typical of the Class, and they will adequately and fairly protect the interests of the Class.

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III.

Jefferson County Drainage District No. 6 is a division of the offices of Jefferson County, Texas, with its principal place of business in Beaumont, Jefferson County, Texas. At all times pertinent to this cause of action, Jefferson County Drainage District No. 6 was doing business within the jurisdiction and venue of this Court. It may be served with process by serving Richard LeBlanc, Post Office Box 20078, Beaumont, Texas 77720-0078.

IV.

The Defendant constructed a coffer dam on their ditch located south of Highway 90 and Yorkshire Road. The coffer dam diverted the water and caused the flooding to the class which began on June 7, 2001. The Defendant failed to remove the coffer dam prior to the rain and severe flooding occurred to homes, businesses, and other structures located in the areas upstream including but not limited to Meeker Road, Yorkshire Road and Old Sour Lake Road.

V.

As a result of the diversion of the water caused by the coffer dam, severe flooding occurred beginning on June 7, 2001. At this time, the exact number of homes, businesses and other structures damaged is unknown. Damages, however, are estimated to be substantial.

VI.

Plaintiffs would show unto this Honorable Court that the Defendant violated all of the provisions of the Texas Water Code. Defendant interfered with the natural drainage. Plaintiffs seek to recover the damages sustained by the Class as a result of Defendant's obstruction of the natural water flow.

VII.

Plaintiffs would further show that Defendant was negligent in one or more of the following ways, each of which constitute a proximate cause of the Class' damages:

- 1) In failing to remove the coffer dam to allow for drainage;
- 2) In failing to clean and maintain the established drainage ditches, canals, channels, and natural waterways for the drainage of water; and
- 3) In other acts of negligence to be shown at the time of trial.

VIII.

Plaintiffs seek to recover their property damage and such other damages that may be allowed by law. Such damages include pre- and post-judgment interest, costs of court, attorneys' fees and such other damages as allowed by the Court.


PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Ed Clark and wife, Melissa Clark, Individually and As Representatives of the Class, respectfully pray that Defendant be cited to appear and answer herein, and that upon final hearing hereof, Plaintiffs, Individually and As Representatives of the Class, have judgment for their damages, for pre- and post-judgment interest, costs of court, and reasonable attorneys' fees.

Plaintiffs further pray for general relief.

Respectfully submitted,

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By: Michael J. Lindsay
Michael J. Lindsay by permission
State Bar No. 12368800

**ATTORNEYS FOR PLAINTIFF,
ED CLARK AND WIFE, MELISSA CLARK.
INDIVIDUALLY AND AS REPRESENTATIVES
OF THE CLASS**

JURY DEMAND

Plaintiffs respectfully request a trial by jury in this case.

Steven C. Barkley
STEVEN C. BARKLEY

tb KS

NO. E-165,279

ED CLARK AND WIFE,
MELISSA CLARK, INDIVIDUALLY
AND AS REPRESENTATIVES
OF THE CLASS

VS.

JEFFERSON COUNTY DRAINAGE
DISTRICT NO. 6

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FILED
IN THE DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

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JEFFERSON COUNTY, TEXAS

172ND JUDICIAL DISTRICT

**DEFENDANT'S ORIGINAL ANSWER
TO PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW JEFFERSON COUNTY DRAINAGE DISTRICT NO. 6 ("DD6"), Defendant in the above-styled and numbered cause, and in answer to Plaintiffs' Original Petition filed herein, would show unto the Court the following:

**I.
GENERAL DENIAL**

1. Defendant denies each and every, all and singular, the material allegations contained in Plaintiffs' Original Petition and demands strict proof thereof.

**II.
SPECIFIC DENIALS AND AFFIRMATIVE DEFENSES**

2. Defendant would show that Plaintiffs' injuries and damages, if any, were the result of an act of God.

3. Defendant would show that the sole cause or, in the alternative, a proximate cause, of Plaintiffs' alleged damages and injuries is the negligence of Plaintiffs and the putative class members.

4. In the alternative, Defendant would show that Plaintiffs' injuries and damages, if any, were caused by persons or entities over whom Defendant had no control.

5. Defendant hereby invokes all damages caps set forth in the Texas Civil Practice & Remedies Code and the Texas Tort Claims Act.

6. Defendant specifically denies that this case is appropriate for class treatment under Rule 42 of the Texas Rules of Civil Procedure.

III.
DEFENSE OF SOVEREIGN IMMUNITY PURSUANT
TO THE TEXAS TORT CLAIMS ACT

7. Defendant invokes the defenses of governmental and sovereign immunity, and would show that the Court lacks subject matter jurisdiction over this lawsuit as a result of Defendant's immunity.

8. Defendant further invokes all defenses available under section 101.056 of the Texas Civil Practice & Remedies Code, and further states that any alleged action or inaction on its part involved a discretionary power for which Defendant is exempted from liability under the Texas Tort Claims Act.

9. Defendant further asserts exemption from liability pursuant to Texas Civil Practice & Remedies Code § 101.024.

10. Defendant further invokes each and every defense and limitation available under the Texas Civil Practice & Remedies Code and the Texas Tort Claims Act regarding governmental liability for tort claims, and specifically asserts its rights to governmental immunity and sovereign immunity in this cause of action.

IV.
Jury Demand

11. Defendant respectfully requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant moves and prays the Court that upon trial hereof Plaintiffs recover nothing, that Defendant goes hence with its costs, and for such other and further relief as the Court may deem proper.

Respectfully submitted,



Larry J. Simmons

State Bar No. 00789628

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COUNSEL FOR DEFENDANT, JEFFERSON

COUNTY DRAINAGE DISTRICT NO. 6

CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of July, 2001, a true and correct copy of Defendant's Original Answer to Plaintiffs' Original Petition was forwarded to all known counsel of record pursuant to the Texas Rules of Civil Procedure.



Larry J. Simmons